



July 17, 2002

Luly Massaro, Commission Clerk  
Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

**Re: Last Resort Acquisition Plan, RIPUC Docket 3444**

Dear Ms. Massaro:

This letter responds to the issues raised by the Commission at the end of the hearing on Monday, July 15, 2002 in the above matter. At the close of the hearing, the Commission requested positions on the following two related issues:

1. State your position regarding the Commission's ability to review the prudence of Narragansett's procurement of last resort service.
2. Using the example developed by Mr. Hager at the hearing, state your view as to the Commission's ability to review the reasonableness of Narragansett's decision to modify or not to modify its procurement and pricing to reflect the non-conforming bid.

As we explained at the hearing, the recently enacted statute governing the procurement of last resort service requires Narragansett to file and the Commission to approve a Last Resort Acquisition Plan. Narragansett is then required to implement the plan and the costs associated with that implementation are recoverable from customers. The statutory provisions are clear. Under G.L. Section 39-1-27.3(c), "[once an acquisition plan is approved by the commission, the electric distribution company shall be authorized to acquire last resort service supply consistent with the approved acquisition plan and recover its costs incurred from providing last resort service pursuant to the approved acquisition plan.]"

The key issue presented at the hearing was focused on the case when the Last Resort Acquisition Plan itself provides Narragansett with the discretion or flexibility to modify the terms or pricing methodology of the Acquisition Plan in response to a non-

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conforming bid or a change in underlying market conditions. Mr. Hager developed an example under which a bidder, using the flexibility that Narragansett has reserved in its Request for Proposal (page 7, Section 5.2), excludes from its bid price the cost of uplift or installed capacity, and as a result bids a price equal to \$50 per megawatt-hour, \$1 below the cost of the next conforming bid. Following analysis and further discussions with the bidders, Mr. Hager determines that the estimated cost for Narragansett to cover the excluded cost is only \$0.25 and decides either to accept the non-conforming bid or to reject the bid and move forward with the conforming bid at \$51.

Two questions are presented by the example: first, whether it is reasonable to include flexibility in the Plan to consider these new options; and second, whether the Commission should have the ability to review at a later date Narragansett's exercise of its flexibility. The answer to the first question is that it is reasonable to include flexibility in the Plan to make modifications and to allow Narragansett to evaluate and procure better, lower cost power supplies for its last resort service customers. Thus, Narragansett continues to propose the Plan as it was initially filed. We do not recommend the alternative approach discussed at the hearing, which would limit Narragansett's discretion to follow new options that are developed as part of the bidding process. Because these new options will be pursued only if they benefit Narragansett's customers within the constraints of the procurement plan in a way that is fair to other bidders, Narragansett should have the flexibility to evaluate and implement them.

The answer to the second question is also relatively straightforward. If Narragansett retains discretion within the plan to modify the procurement process, it should also have the responsibility to exercise that discretion reasonably. Thus, the exercise of discretion under the plan should be subject to review. In our Plan filing, several opportunities for this review are provided. First, we have agreed to consult with the Division when initial bids, including the nonconforming bid in the example, are received. Second, we would notify the Commission as soon as we decide to select an option that does not comport with the baseline assumption in the Plan. Third, we are committed to consult with the Division again at the time the final selection of a supplier is made. Finally, we would include the basis for our decision in the informational report that is filed with the Commission after the commitment is made, but just prior to the effective date of the purchase. Each of these steps provides an opportunity for the Commission or Division to suggest an alternative approach or raise concerns. In the case of our example, each step provides an opportunity to evaluate whether Narragansett's exercise of discretion to accept or reject the nonconforming bid is being exercised reasonably.

In addition to these opportunities, the Division suggests that Narragansett exercise of discretion reserved in the Plan should also be subject to an after the fact prudence review. Although a prudence review is theoretically possible, we believe that the review would be limited as a matter of practice. The review would only apply to discretionary decisions reserved in the Plan. Compliance with the Plan's provisions that have been approved by the Commission should not give rise to prudence exposure. Even when discretionary decisions were subject to review, the review would be completed based on

the facts and circumstances available to Narragansett at the time. Nevertheless, with these limitations, Narragansett agrees that, notwithstanding the notification to the Division and Commission as set forth above, the Commission retains authority to conduct a retrospective review of the exercise of Narragansett's discretion undertaken under an approved Plan. Narragansett's actions would also be subject to review for compliance with the Plan as approved by the Commission.

We have reviewed this response with the Attorney General and Division and are authorized to state that they agree with this approach.

Thank you for your attention to our filing.

Very truly yours,

Thomas G. Robinson

cc: S. Scialabba  
P. Roberti  
Service list